

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**IN RE: JOHN LEON THOMAS, JR.,
Debtor.**

CASE No. 10-21027

**MOTION FOR ORDER APPROVING SETTLEMENT AND
COMPROMISE OF ADVERSARY PROCEEDING AND ATTORNEY FEES**

On this day comes the Debtor and moved this Court for an Order that approving the confidential settlement and compromise of an adversarial proceeding case number AP 12-02049 in which the Debtor had with a Creditor, in this honorable Court.

Counsel for the Debtor represents to the Court as follows:

1. The Debtor has an adversary preceding with the case number AP 12-02049 pending before this Honorable Court in which the Debtor is the Plaintiff and a Creditor is a Defendant. The civil action is for causes of action filed pursuant to violations of the West Virginia Consumer Credit and Protection Act.
2. The Debtor's counsel handled the dispute on behalf of the Debtors with no cash retainer nor charging the Debtors any up-front fees or costs. Debtor's counsel retained all the risk that the case would fail to produce a settlement or award of damages. Debtor understood the contingency fee arrangement and has approved the settlement and disbursement of the contingency fee to his Counsel.
3. The Debtor's counsel met with the Debtor and investigated the potential cause of action. Counsel provided the Debtor with the necessary logs and information to track the cause of action. Additionally, counsel researched the cause of action and verified its viability. An adversary proceeding was filed, with litigation being conducted, including pleadings and motions. Debtor's counsel worked extensively with counsel for the Defendant on negotiating a settlement. Debtor approved the settlement agreement and was informed about the portion that would be paid to them pursuant to his exemptions on schedule C of his Chapter 13 bankruptcy petition. Debtor was also informed what portion of the settlement would be paid as attorney fees. The Debtor's entire settlement is exemptible under their Chapter 13 petition and appropriate schedules have been filed.
4. As a result of pre-litigation discovery and negotiations the causes of action were settled for a confidential sum. The dispute was settled on behalf of the Debtors by attorney, Mitchell Klein, of Klein, Sheridan, & Glazer L.C.
5. As a result of the dispute resolution and pursuant to a written retainer, contingency fee, and cost agreement, the expenses and attorney fees incurred by attorney, Mitchell L. Klein, are to

be one third of the settlement amount. The TOTAL amount to be disbursed to the Debtor is \$5,000. The Debtor has amended his schedules to exempt this amount.

6. Counsel for the Debtor has provided a copy of the confidential settlement agreement to the Chapter 13 Trustee for her review and consideration. Upon information and belief, the Trustee has no objection to the terms of the settlement and the amount compensation and costs claimed by the Debtors' counsel.

7. The Debtors believe no creditors will be prejudiced by this settlement and compromise.

Based upon the representations by Debtor's counsel, the Debtor humbly request the Court find as a matter of fact and law as follows:

1. The settlements and compromises of this civil dispute is in the best interest of the Debtor, and does not prejudice any creditors or the estate.
2. The settlement and compromise proceeds exempted pursuant to W.Va. Code Section 38-10-4(e) shall be paid directly to the Debtor by their Counsel, Klein & Sheridan, LC.
3. The attorney fees payable to the Debtor's counsel in the amount of \$2,500 are reasonable and necessary and within the customary range of similar litigation matters. They are to be paid in accordance with the written fee agreement executed by the Debtor.
4. The Chapter 13 Trustee has had the opportunity to review the settlement and compromise agreement as well as a detailed report by Debtor's counsel on the receipt and disbursement of the settlement proceeds.
5. That the forgoing provides the Court with sufficient safeguards to approve the settlement and compromise agreements.

WHEREFORE, the Debtors requests the following relief:

1. The settlement and compromise of the civil dispute, the details of which are subject to a confidentiality agreement be approved.
2. The Debtors' counsel's contracted for fee of one-third of the settlement be approved.
3. The total amount of \$5,000 will be distributed to the Debtor pursuant to a confidential settlement agreement.
4. The Debtor's counsel will make a full accounting of the amounts received and a detailed report of distributions made in both civil actions to the Chapter 13 Trustee within 7 days of the distributions.

DEBTOR BY COUNSEL:

/s/ Mitchell Lee Klein

Klein Sheridan & Glazer, LC

3566 Teays Valley Road

Hurricane, WV 25526

304-562-7111

bsherdan@kleinandsheridan.com

CERTIFICATE OF SERVICE

The forgoing Motion was served upon the United States Trustee and the Chapter 13 Trustee via the ECF System by the undersigned this 22 day of August 2014.

/s/Mitchell Lee Klein